

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Developing an Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |
| |) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers |) | WC Docket No. 07-135 |
| |) | |

DECLARATORY RULING

Adopted: February 6, 2012

Released: February 6, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In light of evidence that there is a pattern of call completion and service quality problems on long distance calls to certain rural areas, and in response to numerous requests,¹ the Wireline Competition Bureau issues this Declaratory Ruling to clarify the scope of the Commission's prohibition on blocking, choking, reducing or restricting telephone traffic.²

2. Rate-of-return carriers³ that serve rural areas have reported a sharp increase in complaints that long distance calls and faxes are not reaching their customers.⁴ Rural customers have also

¹ See Letter from the National Association of Regulatory Utility Commissioners to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 2 (filed September 29, 2011) (*September 2011 NARUC Letter*) (urging the Commission to reaffirm, *inter alia*, the existing obligations of carriers to properly route traffic); Letter from representatives of the Nebraska Public Service Commission, Missouri Public Service Commission, Minnesota Public Utilities Commission, Montana Public Service Commission, South Dakota Public Utilities Commission, Michigan Public Service Commission, and Wyoming Public Service Commission to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 2 (filed Dec. 1, 2011) (*December 2011 State PSCs Letter*) (requesting a declaratory order stating that carriers whose customers originate calls are responsible for completion of those calls); Letter from the National Telecommunications Cooperative Association to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket NO. 09-51, at 1, 3 (filed Sept. 20, 2011) (*September 2011 NTCA Letter*) (similar).

² 47 C.F.R. § 1.2 (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty”); *see also* 5 U.S.C. § 554(e) (“The agency, with like effect as in the case of other orders and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty”).

³ A rate-of-return carrier is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in 47 C.F.R. § 61.3. *See* 47 C.F.R. § 54.5.

⁴ *See, e.g.*, Letter from the National Exchange Carrier Association (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and Western Telecommunications Alliance, to Theresa Z. Cavanaugh and Margaret Dailey, Investigations and Hearings Division, Enforcement Bureau, FCC (June 13, 2011) (*June 2011 NECA, et al. Letter*).

complained of poor call quality, as well as of calls that ring for a prolonged period for the caller but that do not ring, or ring on an extremely delayed basis, on the receiving end.⁵ These problems can have dire consequences: Small businesses can lose customers who get frustrated when their calls don't go through. Urgent long distance calls from friends or family can be missed. Schools may be unable to reach parents with critical alerts, including school closings due to extreme weather. And those in need of help may be unable to reach public safety officials.⁶

3. In this Order, we remind carriers of the Commission's longstanding prohibition on carriers blocking, choking, reducing or otherwise restricting traffic.⁷ Furthermore, we clarify that this prohibition extends to the routing practices described in greater detail below that have the effect of blocking, choking, reducing, or otherwise restricting traffic.

4. We also make clear that practices such as those described herein that lead to call termination and call quality problems may constitute unjust and unreasonable practices in violation of section 201 of Communications Act of 1934, as amended (the "Act"),⁸ and/or may violate a carrier's section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services.⁹ Finally, we emphasize that, under section 217 of the Act, carriers are responsible for the actions of their agents or other persons acting for or employed by the carriers.¹⁰

II. BACKGROUND

5. In filings with the Commission¹¹ and in presentations at the Commission's October 18, 2011, workshop on rural call routing and termination problems,¹² several parties identify a number of rural call completion issues, and ask the Commission to address them promptly. Trade associations that represent rate-of-return carriers (collectively "rural associations") and several states describe the call termination issues affecting rural areas as a serious, widespread problem and emphasize that when businesses, consumers, and government officials are unable to receive calls, it compromises the integrity and reliability of the PSTN and threatens the public safety, homeland security, consumer welfare, and economic well-being in rural America.¹³ These parties assert that call termination problems continue to

⁵ *Id.*

⁶ See, e.g., *September 2011 NTCA Letter* at 2-3.

⁷ See, e.g., *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, 22 FCC Rcd 11629, 11631 paras. 1, 6 (WCB 2007) (*2007 Call Blocking Declaratory Ruling*).

⁸ 47 U.S.C. § 201.

⁹ 47 U.S.C. § 202.

¹⁰ 47 U.S.C. § 217.

¹¹ See *June 2011 NECA, et al. Letter; December 2011 State PSCs Letter; September 2011 NARUC Letter; September 2011 NTCA Letter*.

¹² See *FCC Launches Rural Call Completion Task Force to Address Call Routing and Termination Problems in Rural America; Task Force to Hold Workshop October 18; Intercarrier Compensation Reform is Long-Term Solution*, News Release (rel. Sept. 26, 2011) (*Task Force and Workshop News Release*); see also *FCC Announces Agenda for October 18 Rural Call Completion Workshop*, Public Notice, DA 11-1715, 26 FCC Rcd 14351 (rel. Oct. 14, 2011) (*Workshop Public Notice*). The workshop can be viewed at: <http://www.fcc.gov/events/rural-call-completion-workshop>.

¹³ See, e.g., *June 2011 NECA, et al. Letter* at 3-4 (noting that rural telecommunications providers have reported instances of small businesses losing tens of thousands of dollars in sales because their customers cannot reach them, families being unable to communicate and check on the safety and well-being of their loved ones, a public safety notification system in South Dakota intended to notify parents of school alerts being unable to complete calls placed from a distant location, and a state police barracks being unable to receive long distance calls); *September 2011*

(continued...)

increase¹⁴ and that the result is the “effective disconnection of rural consumers from many other parts of the PSTN.”¹⁵ As evidence of the problem, rural associations report that rate-of-return carriers serving rural areas have received an alarming increase in complaints from their customers stating that long distance calls and faxes are not reaching them or that call quality is poor.¹⁶ Indeed, these rural associations state that 80% of rural carriers responding to one survey reported problems, and rural subscriber reports of problems receiving calls increased by over 2000 percent in the twelve-month period from April 2010 to March 2011.¹⁷

6. Consumers report significant problems when attempting to place calls to rural areas through their long distance providers, including excessive call setup delay and calls that fail to connect. In some cases, the caller reports hearing prolonged ringing either before the called phone has actually been rung or when the called phone is never actually rung at all, causing the caller to think that no one is at the called location.¹⁸ In other cases where calls to rural customers are delayed or fail to connect, rural carriers state that calls have failed to route properly and instead loop between providers, routing back to a provider that previously handed off the same call to another provider for completion.¹⁹ Carriers report that, at other times, calling parties receive false or misleading intercept messages that falsely indicate, for example, that the call cannot be completed as dialed.²⁰ We take these reports very seriously, given the longstanding obligations of telephone carriers, and the significant economic and public safety concerns that these issues raise. We are particularly concerned about problems that may adversely affect the

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NARUC Letter at 1-3 (noting that rural telecommunications providers have also reported complaints from a hospital having difficulty contacting patients); *see also September 2011 NTCA Letter* at 2-3; *December 2011 State PSCs Letter* at 1-3; and *September 2011 NTCA Letter* at 1.

¹⁴ *See, e.g., June 2011 NECA, et al. Letter* at 4 (stating that this problem is widespread and increasing); *September 2011 NARUC Letter* at 1 (“it appears call routing and termination problems are again on the rise”); *September 2011 NTCA Letter* at 2 (“there is a troubling recent increase in reports that calls are failing to route properly or arrive at rural networks”; “call routing and termination problems appear to be increasing once again”).

¹⁵ *See September 2011 NTCA Letter* at 4.

¹⁶ *See, e.g., June 2011 NECA, et al. Letter* at 3-4. The rural associations also note that the problem is likely under-reported because the parties called are likely not informed of all of the instances when calls have failed to reach them and may not always report those that they do discover. *Id.*

¹⁷ *See Letter* from the National Telecommunications Cooperative Association (NTCA) to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-135 and 11-39, CC Docket No. 01-92 at 7 (filed March 11, 2011) (stating that 80% of carriers responding to NTCA’s survey reported termination problems, 28% reported that persistent concerns continue, and 46% reported ongoing intermittent issues); *see also June 2011 NECA, et al. Letter* at 3-4 and Appendix A. A sizeable portion of these rural telecommunications providers said that the problems continue to arise intermittently despite efforts to “troubleshoot” and resolve them when detected. *June 2011 NECA, et al. Letter* at 3-4 and Appendix A. This survey also addressed caller ID issues that we do not address here. Those caller ID issues were addressed in a November 2011 Commission Order. *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform -- Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, paras. 734, 973-974 (rel. Nov. 18, 2011) (*ICC/USF Transformation Order*); *see also Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, WC Docket No. 11-39, 26 FCC Rcd 9114 (2011).

¹⁸ *See, e.g., June 2011 NECA, et al. Letter* at 1; *September 2011 NARUC Letter* at 4.

¹⁹ *Id.*

²⁰ *Id.*

availability of reliable telephone service to consumers, businesses, and public health and safety officials in rural America.

7. Call completion problems appear to be occurring particularly in rural areas served by rate-of-return carriers where the costs that long distance providers incur to complete calls are generally higher than in non-rural areas. To minimize call termination charges, long distance providers often use third-party “least-cost routers,” which attempt to connect calls to their destination at the lowest cost possible, usually within defined service parameters. Rural associations state that the call completion problems appear to arise from how originating carriers choose to set up the signaling and routing of their calls, and that many of these call routing and termination problems could lie with underlying routing providers selected by carriers who offer retail long distance services.²¹

8. In response to these issues, NARUC has passed a resolution urging its state members and the Commission to “take all appropriate actions to protect consumers by immediately addressing the call terminating issues that exist.”²² In addition, several state commissions recommend that the Commission issue a declaratory order to address the rural call completion issue.²³ The rural associations also request that the Commission take action.²⁴ NTCA specifically requests that the Commission issue a clear policy statement affirming the legal obligation of retail interexchange carriers to address and resolve any call routing and termination failures on their own networks and those of “downstream” routers involved in any call flows.²⁵

9. *Previous Actions.* The Commission has stated that carriers are prohibited from blocking, choking, reducing or restricting traffic in any way, including to avoid termination charges. Noting that the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the explicit goals of the Act, the Bureau issued a declaratory ruling in 2007 to clarify that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.²⁶ In September 2011, the Commission created the Rural Call Completion Task Force to address and investigate the growing problem of calls to rural customers that are being delayed or failing to connect.²⁷ On October 18, 2011, the Rural Call Completion Task Force held a workshop to identify specific causes of the problem and discuss potential solutions with key stakeholders.²⁸

10. In its recent Order reforming intercarrier compensation (ICC) and the Universal Service Fund, the Commission again emphasized the importance of its longstanding prohibition on call

²¹ See, e.g., *June 2011 NECA, et al. Letter* at 3; *September 2011 NTCA Letter* at 3.

²² *September 2011 NARUC Letter* at 2, 4-5.

²³ *December 2011 State PSCs Letter* at 2.

²⁴ *June 2011 NECA, et al. Letter* at 6-7; *September 2011 NARUC Letter* at 1. The *June 2011 NECA, et al. Letter* also requests that the Commission initiate a thorough investigation of interexchange call routing practices. *June 2011 NECA, et al. Letter* at 6. The Enforcement Bureau is currently considering this request.

²⁵ *September 2011 NTCA Letter* at 1, 3.

²⁶ See *2007 Call Blocking Declaratory Ruling*, 22 FCC Rcd 11629, 11631, paras. 1, 6 (clarifying that carriers cannot block interexchange calls that terminate with certain local exchange carriers (LECs) as a form of self help to resolve disputes concerning the access rates of those LECs); see also *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987) (denying application for review of Bureau order, which required petitioners to interconnect their facilities with those of an interexchange carrier in order to permit the completion of interstate calls over certain facilities).

²⁷ See *Task Force and Workshop News Release*.

²⁸ *Id.*; see also *Workshop Public Notice*, 26 FCC Rcd 14351. The workshop can be viewed at: <http://www.fcc.gov/events/rural-call-completion-workshop>.

blocking.²⁹ The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's telecommunications network and that call blocking ultimately harms the consumer.³⁰ The Commission also made clear that carriers are directly bound by the general prohibition on call blocking with respect to VoIP-PSTN traffic, as with other traffic.³¹ In that same Order, the Commission adopted rules that should ultimately address the root causes of many rural call completion problems.³² In particular, in comprehensively reforming ICC, the Order adopted a bill-and-keep methodology for all ICC traffic, and adopted a transition to gradually reduce most termination charges, which, at the end of the transition, should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of telephone service.³³ However, NARUC argues, and we agree, that there is a need to limit the adverse impact of these rural call completion problems on consumers in the near term.³⁴

III. DISCUSSION

11. Consistent with previous decisions, we make clear that practices resulting in the rural call completion problems identified above adversely affect the ubiquity and reliability of the nation's telecommunications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network. For these reasons, we clarify that a carrier that knows or should know that calls are not being completed to certain areas, and that engages in acts (or omissions) that allow or effectively allow these conditions to persist, may be liable for a violation of section 201 of the Act. We also emphasize that it may be a violation of section 202 to provide discriminatory service with respect to calls placed to rural areas. Finally, we clarify that a carrier remains responsible for the provision of service to its customers even when it contracts with another provider to carry the call to its destination.

12. *Unjust or Unreasonable Practices.* We clarify that it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that knows or should know that it is providing degraded service to certain areas³⁵ to fail to correct the problem or to fail to ensure that intermediate

²⁹ See *ICC/USF Transformation Order* at paras. 734, 973-974.

³⁰ *ICC/USF Transformation Order* at para. 734. In a January 5, 2012, FCC Blog post, the chiefs of the Wireline Competition Bureau and Public Safety and Homeland Security Bureau further addressed rural "call completion" problems and described ways that the Commission has been working on this issue over the past few months. See <http://www.fcc.gov/blog/new-year-solutions-rural-call-completion-problems>.

³¹ See *ICC/USF Transformation Order* at paras. 973-74.

³² See, e.g., *ICC/USF Transformation Order* at paras. 736-759. The Commission also adopted rules to address "phantom traffic," i.e., calls for which identifying information is missing or masked in ways that frustrate intercarrier billing. The lack of such basic information to accompany calls has also resulted in calls being delivered without Caller ID, which is a common call quality complaint in rural areas. See *supra* note 17. The Commission now requires telecommunications carriers and providers of interconnected VoIP service to include the calling party's telephone number in all call signaling, and requires intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path. See *ICC/USF Transformation Order* at paras. 719-720; see also 47 C.F.R. § 64.1601(a).

³³ The transition to a bill-and-keep methodology for most terminating charges is nine years for rate-of-return carriers. See *ICC/USF Transformation Order* at para. 801 & Figure 9. See also 47 C.F.R. §§ 51.907, 51.909.

³⁴ *September 2011 NARUC Letter* at 2.

³⁵ This could include, *inter alia*, unreasonable delay to connect a call, as manifested by prolonged silence ("dead air") and/or prolonged ringing in advance of the called phone being alerted. Prolonged ringing occurs when callers are provided with prolonged audible ringing well before the called party's phone has even been alerted. This causes a caller to hang up because they believe the called entity's phone rang and no one is available to answer. See, e.g., Fritz Hendricks, Onvoy Voice Service, "When a person calls a customer in a rural market the [caller's] phone will ring 8 to 10 times before the end office of the ILEC is ever signaled – if it is signaled at all." and "[The caller] will (continued....)

providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately. This is particularly the case when the problems are brought to the carrier's attention by customers, rate-of-return carriers serving rural areas, or others, and the carrier nevertheless fails to take corrective action that is within its power. Carriers do have tools to manage termination suppliers, and it would be unreasonable for a carrier not to make appropriate use of such tools to ensure calls that its customers make to rural areas terminate reliably.³⁶ We note that nothing in this Declaratory Ruling should be construed to dictate how carriers must route their traffic. Even so, if carriers continue to hand off calls to agents, intermediate providers, or others that a carrier knows are not completing a reasonable percentage of calls or are otherwise restricting traffic (e.g., through impaired service quality), that is an unjust or unreasonable practice prohibited by section 201 of the Act.³⁷ Such failures compromise the integrity and reliability of the PSTN and the effectiveness (and universality) of interconnected networks by effectively blocking, choking, reducing, or otherwise restricting traffic to particular locations.³⁸

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hear ring but the far end will never ring; that is the trouble in approximately 60 to 65 per cent of the time.” Rural Call Termination Workshop Video at 13:40, 41:20, viewable at <http://www.fcc.gov/events/rural-call-completion-workshop>. See also *Washington Call Termination Issues*, Washington Independent Telecommunications Association, presented to WUTC Workshop on Call Termination Issues held August 8, 2011, WUTC docket UT-110866, (“Customer call completion issues: [1] Ring tone with no answer – rings 10-20 times – caller hangs up.”) available at <http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/93037ed14bb0cb6f882578e7007442ae!OpenDocument>.

³⁶ For example, at the Commission's Rural Call Completion Workshop last October, AT&T's representative noted that AT&T's contracts with its termination suppliers prohibit looping and require a vendor to return the call to AT&T if it is not able to complete it and urged the adoption of industry best practices in this area. See *AT&T Presentation at FCC Rural Call Completion Workshop* at 2, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310507A1.pdf. At a hearing on this issue convened by the Washington Utilities and Transportation Commission (WUTC), Sprint's representative stated that Sprint regularly reviews a wide range of call quality and call completion statistics across its underlying providers, including answer seizure ratios, post-dial delay metrics, trouble ticket statistics and a wide variety of call quality metrics. See *Least Cost Routing – Sprint's Perspective*, presented to the WUTC Workshop on Call Termination Issues held August 8, 2011, WUTC docket UT-110866, available at <http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/94dc9f3d5a8ec024882578e7007442de!OpenDocument>. We point out these examples to demonstrate that carriers are able to monitor the performance of providers with whom they contract to carry calls on their behalf, but we are neither mandating specific contracting or management practices nor suggesting that such practices would absolve a carrier of liability for a failure nonetheless to ensure that calls are being completed in a just and reasonable manner.

³⁷ We note in this context that what constitutes an unreasonable number of calls failing to complete to rural areas could be a relatively low percentage of calls being carried to all destinations by a particular carrier. In a test call project of 2,150 test calls to rural exchanges in 22 states during the summer of 2011, approximately one in every four calls (24%) was judged “unsuccessful;” two-thirds of those unsuccessful calls (16%) never even reached the rural exchange; and the remaining unsuccessful calls were unacceptably delayed or of poor quality. Test results were provided by originating provider and by provider type. See Letter from Jill Canfield, Director, Legal & Industry, NTCA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135, CC Docket No. 01-92, & WC Docket No. 11-39 attach. (filed Oct. 7, 2011) (“NECA Test Call Project – Summer 2011: Summary of Call Completion & Call Quality Results”).

³⁸ NTCA argues that, when a carrier knows, or should know, of these problems, its “failure to correct these problems or to work in good faith with the called party's carrier is tantamount to the blocking of calls.” *September 2011 NTCA Letter* at 3. NECA, NTCA, OPASTCO, and Western Telecommunications Alliance argue that the failure to take steps to ensure completion of calls that a carrier's customers have contracted for the carrier to complete is an unjust and unreasonable practice, as is the failure to respond meaningfully to repeated concerns raised by another carrier about failures in interconnection. *June 2011 NECA, et al. Letter* at 5.

13. *False and misleading information.* We further clarify that some provider practices in connection with the routing practices discussed above may separately violate section 201(b). We understand that when a call fails to terminate in a rural exchange, the caller may hear an intercept message indicating that the call cannot be completed because the number is out of service or not reachable – when in fact the number is in service and is reachable.³⁹ One impact of supplying false out-of-service messages is to shift the perceived responsibility for call failure – from the viewpoint of the caller – from the originating provider to the terminating rural provider, which may frustrate consumers and make it more difficult to trace and correct problems.⁴⁰ As discussed above, section 201(b) prohibits unjust and unreasonable practices in connection with interstate communications services. The Commission has found that practices by common carriers that deceive or mislead customers are unjust and unreasonable practices under section 201(b).⁴¹ It is a deceptive or misleading practice, and therefore unjust and unreasonable under section 201(b), to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service.⁴²

14. *Unjust or Unreasonable Discrimination in Service Provision and Failure to Ensure Services are Usable by and Accessible to Individuals with Disabilities.* Section 202 of the Act states that:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.⁴³

We further clarify that adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost

³⁹ See, e.g., *June 2011 NECA, et al. Letter* at 1,3 (stating that rural customers report that parties attempting to call them apparently receive misleading or patently false “intercept” messages about how the rural local exchange carrier (RLEC) is refusing to interconnect to receive calls when in fact the call never reached the RLEC’s end office or even the tandem it subtends); *September 2011 NTCA Letter* at 1 (noting that calling parties receive incorrect or misleading message interceptions before the call ever reaches the RLEC or the tandem it subtends); *September 2011 NARUC Letter* at 4.

⁴⁰ See Letter from Montana Senator Terry Murray, Chairman, Legislative Consumer Committee, and Commissioner Travis Kavulla, Chairman, Montana Public Service Commission, to Hon. Julius Genachowski, Chairman, FCC, at 3 (filed September 29, 2011) (noting that it is “understandably frustrating” for the rural carriers when they are blamed for the failure of a call to terminate, “since, if the call is not routed to them in the first place, the call cannot be completed”); see also Fritz Hendricks, Onvoy Voice Service, “The originating carrier is not owning the service responsibility to deliver to the consumer that purchased it from them. Rather, and worse yet, we’ve found that the originating carrier is deflecting the responsibility for the service quality to a rural carrier that has not even been called in the troubleshooting process to help identify what went wrong on a particular call the customer called them about – and it vilifies the LEC.” Rural Call Termination Workshop video at 12:15, viewable at <http://www.fcc.gov/events/rural-call-completion-workshop>.

⁴¹ E.g., *Business Discount Plan, Inc. Apparent Liability for Forfeiture*, 14 FCC Rcd. 340, 355 (1998).

⁴² Aside from being untruthful, such a statement may also have harmful consequences. For instance, when callers to a business hear a message that a number is not reachable or is out of service, they might reasonably conclude that the business is no longer in operation, leading to lost revenues for the business. See, e.g., *September 2011 NTCA Letter* at 3 (recounting a rural telephone subscriber complaint from “a small enterprise that lost tens of thousands of dollars of business when customers were unable to reach it”).

⁴³ 47 U.S.C. § 202.

rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act. Although there may be valid reasons for discrepancies in performance, such discrepancies would be subject to examination to determine whether they are unjustly or unreasonably discriminatory.⁴⁴ Service problems could be particularly problematic for TTY and amplified telephones used by persons with hearing disabilities. Carriers that fail to ensure that services are usable by and accessible to individuals with disabilities may be in violation of section 255 of the Act.⁴⁵ Accordingly, practices that result in disparate quality of service delivered to rural areas could be found unlawful under sections 202 and 255 of the Act.⁴⁶

15. *Role of Agents.* Section 217 of the Act states that a carrier is liable for the acts, omissions, or failures of its agent or other person acting for or employed by the carrier.⁴⁷ Therefore, if an underlying provider is blocking, choking, or otherwise restricting traffic, employing other unjust or unreasonable practices in violation of section 201, engaging in unjust or unreasonable discrimination in violation of section 202, or otherwise not complying with the Act or Commission rules, the carrier using that underlying provider to deliver traffic is liable for those actions if the underlying provider is an agent or other person acting for or employed by the carrier.⁴⁸

16. *Enforcement.* If a carrier engages in any of the prohibited activities described above, the Commission can take appropriate enforcement action pursuant to the remedies available under statutory

⁴⁴ NTCA argues that consumers in rural communities deserve at least the same level of network reliability as urban consumers. See *September 2011 NTCA Letter* at 2. Unsound routing practices are also contrary to the universal service principle of access in rural and high cost areas set forth in section 254(b)(3) of the Act. 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”).

⁴⁵ 47 U.S.C. § 255(c) (“A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.”).

⁴⁶ Additionally, each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers and “not to install network features, functions, or capabilities” that do not comply with the guidelines and standards established pursuant to section 256 of the Act. 47 U.S.C. § 251(a). One purpose of section 256 of the Act is to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks. 47 U.S.C. § 256(a)(2).

⁴⁷ 47 U.S.C. § 217 (“[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”). See also *Silv Communication, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180-82, 5185 (2010) (holding a carrier responsible for the failures of its telemarketers and third party verification companies to obtain proper authorization and verification for changes made to consumers' primary carriers pursuant to section 217 of the Act; also finding willful and repeated violations of sections 258 and 201(b) of the Communications Act where the carrier apparently changed the preferred carrier of consumers without proper authorization, failed to follow Commission rules with respect to the third party verifications, and engaged in unjust and unreasonable marketing practices); *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-21864 (2002) (citing *American Paging, Inc. of Virginia*, 12 FCC Rcd 10417, 10420 (Wireless Bur., Enf. And Cons. Inf. Div. 1997), quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1244 (1984)).

⁴⁸ NTCA asserts that retail interexchange carriers have committed to deliver calls for their customers and they are in the best position to police the conduct of those to whom they hand calls for routing and termination, and to require that those providers in turn do the same with respect to any subsequent hand-off of calls. *September 2011 NTCA Letter* at 3.

authority, including cease-and-desist orders, forfeitures, and license revocations.⁴⁹ Section 503(b)(1) of the Act provides that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵⁰ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.⁵¹

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201, 202, 217, 254, 255 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 202, 217, 254, 255 and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, this Declaratory Ruling in WC Docket No. 07-135 and CC Docket No. 01-92 IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

⁴⁹ See 47 U.S.C. §§ 312, 503.

⁵⁰ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

⁵¹ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). The Commission has amended Section 1.80(b)(2) of the rules three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note. The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,325,000 to \$150,000/ \$1,500,000).